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NASA Procedural Requirements

NPR 2190.1

Effective Date: April 10, 2003

Expiration Date: April 10,
2013**COMPLIANCE IS MANDATORY**[Printable Format \(PDF\)](#)

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 (NASA Only)**Subject: NASA Export Control Program - Revalidated w/changes February 1, 2007****Responsible Office: Office of External Relations**[| TOC](#) | [Preface](#) | [Change History](#) | [Chp1](#) | [Chp2](#) | [Chp3](#) | [Chp4](#) | [Chp5](#) | [Chp6](#) | [Chp7](#) | [Chp8](#) |
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CHAPTER 1. Introduction and Definitions

1.1 General

This NPR provides basic procedures and Requirements for fulfilling NASA's obligation to comply with all U.S. export control laws and regulations in its transfers of commodities, software, or technologies to foreign parties (including foreign contractors) in the course of approved international activities. It is the responsibility of every NASA employee to comply with U.S. export control laws and regulations. The NASA Headquarters Export Administrator (HEA), the Assistant Administrator for External Relations, the NASA General Counsel, Enterprise Associate Administrators, Center Directors, Center Chief Counsel, Center Export Administrators (CEA's), Headquarters and Center Export Counsel (HEC/CEC's), NASA International Program/Project Managers, Contracting Officers and Contracting Officers' Technical Representatives (COTR's), and Transportation Officers are the key personnel charged with ensuring NASA's adherence to those laws and regulations.

1.1.1 Questions regarding the execution of responsibilities set forth in this NPR are to be directed to the cognizant NASA CEA or the HEA. Suggestions for improvements in the content of this NPR are welcome and should be made in writing to the attention of the NASA Export Administrator, Office of External Relations, NASA Headquarters, Washington, DC 20546.

1.2 Definitions

1.2.1 "AO" or "Advisory Opinion" is a U.S. Department of State (DOS) term used to reference official DOS correspondence regarding export licensing regulations and policy issues.

1.2.2 "BIS" refers to the Bureau of Industry and Security, a component of the U.S. Department of Commerce (DOC), which administers the Export Administration Regulations (EAR).

1.2.3 "BIS 748P" is the multipurpose application form for a license to export items or classify items subject to the licensing authority of BIS. Export license application forms are electronically submitted to BIS by the NASA Export Administrator at Headquarters.

1.2.4 "CCL" or "Commerce Control List" refers to a list that includes commodities, software, and technology subject to the authority of BIS. The CCL does not include those items exclusively controlled for export by another department or agency of the US Government, e.g., DOS or Department of Energy (DOE). On the CCL, there are 10 general categories of items, each category is subdivided into five descriptive groups, designated by letters A through E.

1.2.5 "CEA" or "Center Export Administrator" is the senior-level official appointed by the Center Director to implement and manage the NASA Export Control Program at each Center.

1.2.6 "CEC" or "Center Export Counsel" is the attorney appointed by the Center Chief Counsel to provide legal

guidance to the CEA in NASA export control matters.

1.2.7 "CFIUS" or "Committee on Foreign Investment in the United States" is an inter-agency committee chaired by the Secretary of Treasury that implements the Exon-Florio foreign investment review legislation. CFIUS seeks to serve U.S. investment policy through thorough reviews that protect national security while maintaining the credibility of our open investment policy.

1.2.8 "CIV" is a CCL-based License Exception in the EAR, 15 CFR § 740.5. CIV authorizes exports and reexports controlled to the ultimate destination for national security reasons only, and identified by "CIV - Yes" on the CCL, provided the items are destined to civil end-users for civil end-uses in specified countries (generally, the nations of the former Soviet Union and certain other countries). Use of EAR Exceptions for exports must have the concurrence of the CEA or the HEA.

1.2.9 "Classification" is the process for determining the relevant entry in the CCL for commodities or technologies that fall under the jurisdiction of the EAR. Classification takes place after the jurisdiction of the item has been determined. Items under the jurisdiction of the EAR can be found on the CCL and items under the jurisdiction of the DOS can be found on the U.S. Munitions List (USML). Individuals are responsible for correctly classifying items. However, NASA can request DOC assistance in classifying an item on the CCL. NASA classification requests must be coordinated with, and submitted by, the NASA Headquarters Export Administrator (HEA).

1.2.10 "CJ" or "Commodity Jurisdiction" refers to the DOS authority to determine if an article or service is under the jurisdiction of the Department of State. A CJ may also be used for consideration of a redesignation of an article or service currently covered by the USML. NASA CJ requests must be coordinated with, and submitted by, the HEA.

1.2.11 "Controls" refers to possible reasons for export prohibitions or restrictions on a commodity, software, or technology. In the context of the EAR, reasons for export control include national security, foreign policy, antiterrorism, crime control, regional stability, international sanctions, and nonproliferation.

1.2.12 "Consignee" is a person, organization, or entity that is a participant or recipient of an export.

1.2.13 "Consignor" is a person, organization, or entity that provides or effects an export.

1.2.14 "DAA" or "NASA Scientific and Technical Document Availability Authorization" refers to NASA Form 1676, used for all NASA-generated or -funded scientific and technical information that is to be released outside NASA. See NPR 2200.2, Requirements for Documentation, Approval, and Dissemination of NASA Scientific and Technical Information.

1.2.15 "DCS" or "Destination Control Statement" is a statement made by the exporter or consignor that must be entered on the invoice, and bill of lading, air waybill, or other export control document that accompanies the shipment to its ultimate consignee or end-user abroad. In the absence of other prescriptions (see Section 1.2.40), and at a minimum, it should read: *"These [item description] were exported from the United States in accordance with the [Export Administration Regulations][International Traffic in Arms Regulations]. Diversion contrary to U.S. law is prohibited."* The DCS relates directly to the "Marking Statement" which is discussed in NASA international agreements that provide for exports of items in NASA programs where, in most cases, the international agreement prescribes the content of the DCS.

1.2.16 "Defense Service" means the furnishing of assistance (including training) to foreign persons, whether in the United States or abroad, in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing, or use of defense articles as defined in 22 CFR §120.6. See 22 CFR §120.9 for more description of a defense service.

1.2.17 "DSP-5" is the DOS application form for a license to permanently export unclassified defense articles and related unclassified technical data controlled by the ITAR and subject to the licensing authority of the DOS. Generally, NASA does not seek licenses for exports of technical data or defense services. All NASA export license applications are coordinated with and submitted by the HEA.

1.2.18 "DTC" or "DDTC" refers to the "Directorate of Defense Trade Controls, a component of the DOS, which administers the ITAR.

1.2.19 "Dual-use" is a term used to distinguish the types of items covered by the EAR from those that are covered by the ITAR. Dual-use refers to items that have both a military and commercial application.

1.2.20 "EAR" or "Export Administration Regulations," 15 CFR §§ 730-774, is the set of regulations that control the export of commercial and dual-use items that are designed for commercial use but may have military use as well. The BIS within the DOC has the responsibility for the EAR under the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401, et seq.).

1.2.21 "EAR-99" is an EAR classification used to describe an item (commodity, software, or technology) that is subject to the EAR, but that is not specifically identified on the CCL. EAR-99 indicates the lowest level of control and is eligible for export to most countries (excluding terrorist-supporting and embargoed nations), using the designation

NLR. See 15 CFR § 740, Supp.1, Country Group E.

1.2.22 "ECCN" or "Export Control Classification Number" is related to the classification process. On the CCL, there are 10 categories of items, 0 through 9; each category is subdivided into five descriptive groups, designated by letters A through E. The ECCN consists of a set of digits and a letter. The first digit identifies the general category (e.g., 9 - Propulsion Systems, Space Vehicles, and Related Equipment); the letter immediately following identifies in which of the five descriptive groups the item is listed (e.g., A - Equipment, Assemblies, and Components). The following digits differentiate individual entries by identifying the type of controls associated with the items contained in the entry (e.g., 0 - National Security reasons). The second and/or third digits serve to differentiate between multilateral and unilateral entries. Thus, in ECCN 9A004, the 9 represents "Propulsion Systems, Space Vehicles, and Related Equipment"; the A represents "Systems, Equipment, and Components," and the 00 represent both the reason for control as "National Security" and is subject to multilateral control. The last digit, 4, simply represents the sequential location in the category.

1.2.23 "ENC" is a License Exception under the EAR, 15 CFR § 740.17. ENC authorizes the export of certain encryption items and "information security" test, inspection, and production equipment. All requirements of the ENC Exception must be reviewed and complied with before its use can be authorized. Use of EAR Exceptions for exports must have the concurrence of the CEA or the HEA.

1.2.24 "End User" is the designated final entity and destination of the export indicated on an export license. The foreign government partner signatory to the international agreement or Memorandum of Understanding with NASA is usually the designated end user on a NASA export license application.

1.2.25 "EPT" or "Export Processing Template" is a helpful decision tree or "flow chart" to guide you through the export process. See Appendix A.

1.2.26 "Exception" is an EAR authorization that allows an export or reexport of an otherwise controlled item to proceed without a license, provided that certain specified conditions are met. "Exception" is a BIS term and applies only to items under the jurisdiction of the EAR. Use of Exceptions for exports must have the concurrence of the CEA or the HEA. See 15 CFR, Part 740 for a description of all EAR License Exceptions.

1.2.27 "Exemption" is an ITAR authorization from DTC for exports of unclassified defense articles and defense services without a license under certain specific provisions or limitations. Exemptions can be found in the ITAR. All conditions of an Exemption must be met before use is authorized. Use of Exemptions for exports must have the concurrence of the CEA or the HEA. See 22 CFR Parts 123, 125, and 126 for a description of the most relevant ITAR License Exemptions.

1.2.28 "Export" is the transfer of anything to a "Foreign Person" or foreign destination by any means, anywhere, anytime, or a transfer to a "U.S. Person" representing a "Foreign Person." An export can be any shipment, mail, transfer, or transmission of commodities, technology, or software, regardless whether it occurs in the United States, overseas, or in space:

- transfer to any person by physical, electronic, oral, or visual means, with the knowledge or intent that the items will be shipped, transferred, or transmitted outside of the United States;
- disclosure of technical data to a foreign national by physical, electronic, oral, or visual means within or outside of the United States (disclosure to U.S. nationals representing foreign interests are not exports unless there is knowledge or reason to know that the technical data will be further disclosed to a foreign party);
- transfer to a foreign country, embassy, or affiliate; and
- transfer of control over a satellite or instrument on-orbit.

1.2.29 "Foreign Person," for purposes of export control regulation, is any person who is not a U.S. citizen, permanent resident alien, or "Protected Individual" of the United States (See 22 CFR § 120.16). Note: Under NASA security policies, a "foreign national" is any person who is not a U.S. citizen (See NPR 1620.1).

1.2.30 "Foreign Visit" refers to a visit by a foreign national or foreign entity representative to any NASA facility, including NASA Headquarters, NASA Centers, JPL, or other Component Facilities. NPR 1371.2 describes the procedures and guidelines for review and approval of all visits to NASA facilities by foreign persons.

1.2.31 "GBL" or "Government Bill of Lading" is an accountable, U.S. Government form used to document and facilitate exports of commodities on behalf of the U.S. Government. When a GBL is used to effect an export, the U.S. Government agency authorizing the use of the GBL is the exporter.

1.2.32 "GBS" is a CCL-based License Exception in the EAR, 15 CFR § 740.4. GBS authorizes exports to most free-world countries of certain commodities controlled for national security reasons only. All requirements of the GBS Exception must be reviewed and complied with before its use can be authorized. Use of Exceptions for exports must be coordinated with the CEA or the HEA.

1.2.33 "GOV" is a License Exception in the EAR, 15 CFR § 740.11. GOV authorizes exports to and from U.S.

Government agencies or personnel. It also permits exports to certain foreign government agencies. All requirements of the GOV Exception must be reviewed and complied with before its use can be authorized. Use of Exceptions for exports must have the concurrence of the CEA or the HEA.

1.2.34 "HEA" is the NASA Headquarters Export Administrator. The HEA is appointed by the Assistant Administrator for External Relations, and is responsible for: (1) ensuring the compliance of all NASA program activities and exports with U.S. export control laws and regulations and this NPR; (2) serving as NASA's Empowered Official for purposes of 22 CFR § 120.25 and 15 CFR § 758.1(a), in certifying and approving all NASA export license applications; (3) serving as the Headquarters point of contact with CEA's; and (4) serving as the Agency's interagency interface for export control matters with the DOS and DOC, and others as appropriate, for all export licensing matters.

1.2.35 "International Agreement" refers to the approved agreement document between NASA and a foreign entity. An International Agreement can take the form of a letter agreement, a Memorandum of Understanding, or similar instruments. Unless otherwise delegated by the Assistant Administrator for External Relations, international agreements are signed by authorized officials in the Office of External Relations at NASA Headquarters. See NPD/NPR 1050.1.

1.2.36 "ITAR" or "International Traffic in Arms Regulations" is the set of regulations that control the export and temporary import of defense articles and services. The ITAR (22 CFR §§ 120-130) is promulgated under the authority of the Arms Export Control Act (22 USC §§ 2778, et seq.). The authority for these controls has been delegated to the Secretary of State by Executive Order 11958, as amended (42 Fed. Reg. 4311).

1.2.37 "Item" means commodities, software, and/or technology/technical data.

1.2.38 "IVL" is an Individual Validated License, which is an export license issued by the DOC or DOS. The DOS export license has a raised stamp and signature by the licensing officer and the original license must be presented to Department of Homeland Security's Bureau of Immigration and Customs Enforcement (BICE) at the time of export. The DOC export license has no signature and a copy can be presented to BICE at the time of export.

1.2.39 "LVS" is a CCL-based License Exemption in the EAR, 15 CFR § 740.3. LVS authorizes the export in a single shipment of eligible commodities of limited value where identified on the CCL. All requirements of the LVS Exception must be reviewed and complied with before its use can be authorized. Use of Exceptions for exports must have the concurrence of the CEA or the HEA.

1.2.40 "Marking" or "marking statement" refers to the export control notice that NASA must place on export documents. i.e., GBL, notification for foreign recipient, inventory, or packing lists) for all exports of controlled commodities or technology. The International Agreement governing the export will have a Technical Data and Goods Clause that indicates the marking statement requirement. It is important that all controlled technical data (including software) include a marking statement prior to transfer to the foreign party. A marking statement is similar to the Destination Control Statement (DCS) required in the EAR and discussed in 1.2.15 above. The typical marking statement for exports effected under international agreements would read, "*This (item description) is subject to the export control laws and regulations of the United States of America and is being exported from the United States to (name of foreign recipient) in accordance with (cite international agreement or contract) and U.S. export laws and regulations and are to be used by (name of authorized foreign recipients) only for the purposes of fulfilling their responsibilities under (cite international agreement or contract) and shall not be retransferred to any other entity without the prior written permission of NASA.*"

1.2.41 "NLR" or "no license required" is an EAR term and is entered on the Shipper's Export Declaration (SED), certifying that no license is required to export the item. NLR is determined in the export classification process.

1.2.42 "Publicly Available" or "public domain" means information (including software) that is not subject to export control due to its unrestricted availability as follows: in open literature; available at any library to which the public has access; open seminar; fundamental basic and applied research where the resulting information is ordinarily published and shared broadly within the scientific community; educational information taught in catalog courses, including general scientific, mathematical or engineering principles commonly taught in academic institutions; information contained in published patents or published patent applications; or basic marketing information on function or purpose or general system descriptions. It does not include research which is restricted for proprietary reasons, or which is subject to specific U.S. Government access and dissemination controls. Additionally, information or software which is proprietary to any party is not publicly available. "Public Domain" is a term similar to publicly available. The ITAR defines public domain in 22 CFR § 120.11. The EAR defines publicly available in 15 CFR Part 732.

1.2.43 "Recordkeeping" refers to the requirements for the maintenance of original records pertaining to export transactions for inspection by U.S. Government regulatory departments and agencies upon request. Recordkeeping requirements for the EAR are found at 15 CFR Part 762 and for the ITAR at 22 CFR Part 130.14. Generally, export records are to be kept for all exports 5 years beyond the expiration date of an export license or 5 years beyond use of a License Exception or Exemption.

1.2.44 "Red Flag" means any abnormal circumstance in a transaction that indicates that the export/transfer may be

destined for an inappropriate end use, end user, or destination. Examples may include requests for items that are inconsistent with the needs of the partner/project, requests for equipment configurations that are incompatible with the stated destination (e.g., 120 volts in a country with 220 volts), or other apparent irregularities. Always inquire and seek additional information if red flags are indicated. Refer to the EAR 15 CFR Part 732, Supplement 3.

1.2.45 "RPL" is a License Exception in the EAR, 15 CFR § 740.10. RPL authorizes exports associated with one-for-one replacement of parts or servicing and replacement of equipment. All requirements of the RPL Exception must be reviewed and complied with before its use can be authorized. Use of Exceptions for exports must have the concurrence of the CEA or the HEA.

1.2.46 "SED" or "Shipper's Export Declaration," is a joint Bureau of the Census/International Trade Administration document used for compiling the official U.S. export statistics and administering the requirements of the Export Administration Act as provided for in the Foreign Trade Statistics Regulations (15 CFR Part 30) and the EAR (15 CFR Parts 768-799). The SED is filed by the exporter with the Bureau of Immigration and Customs Enforcement at the port of exit from the United States.

1.2.47 "STI" refers to Scientific and Technical Information, which consists of the collected set of facts, analyses, and conclusions resulting from scientific, technical, and related engineering research and development efforts, both basic and applied. Information published in policy documents, such as NASA directives and NASA Technical, Engineering, or Safety Standards, or information published as a result of mishap investigations, are not considered STI. See NPR 2200.2A for further information.

1.2.48 "Technical Assistance" refers to Defense Service. See 1.2.16. A Technical Assistance Agreement is an ITAR licensing document required for the performance of a defense service or the disclosure of technical data.

1.2.49 "Technical Data" and "Technology": "Technical Data" is an ITAR term, defined in the ITAR at 22 CFR § 120.10. It is defined as information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of a defense article identified on the U.S. Munitions List (USML). "Technology" is an EAR term, defined in the EAR at 15 CFR Part 772. It is defined as specific information necessary for the development, production, or use of a product. The information takes the form of technical data or technical assistance. Controlled technology is further described in the General Technology Note (15 CFR Part 774, Supp. 2). As with "Technical Data", controlled "Technology" does not include information which is "publicly available." See 1.2.42 of this NPR. For the purposes of this NPR, the terms "Technical Data" and "Technology" have the same meaning.

1.2.50 "TMP" is a License Exception in the EAR, 15 CFR § 740.9. TMP authorizes various temporary exports; exports of items temporarily in the United States; and exports of beta test software. All requirements of the TMP Exception must be reviewed and complied with before its use can be authorized. Use of Exceptions for exports must have the concurrence of the CEA or the HEA.

1.2.51 "TSR" is a CCL-based License Exception in the EAR, 15 CFR § 740.6. TSR permits exports of technology and software controlled for national security reasons only where identified on the CCL, provided the software or technology is destined to a free-world country. (See Country Group B, Supplement No. 1 to 15 CFR Part 740.) A written assurance is normally required from the consignee before exporting under TSR. All requirements of the TSR Exception must be reviewed and complied with before its use can be authorized. Use of Exceptions for exports must have the concurrence of the CEA or the HEA.

1.2.52 "TSU" is a License Exception in the EAR, 15 CFR § 740.13. TSU authorizes exports of operation technology and software; software updates (bug fixes); "mass market" software subject to the General Software Note (15 CFR Part 774, Supp. 2); and encryption source code (and corresponding object code) that would be considered publicly available under 15 CFR § 734.3(b)(3). All requirements of the TSU Exception must be reviewed and complied with before its use can be authorized. Use of Exceptions for exports must have the concurrence of the CEA or the HEA.

1.2.53 "TTCP" or Technology Transfer Control Plan defines what technologies or technical data in a NASA program or project requires protection and what foreign access is permissible. It also assigns ECP requirements and responsibilities for programs or projects with foreign national participation. NASA international program activities should have a TTCP to follow when they involve exports or transfers of controlled technical data to international partners/foreign parties who are neither members or nationals of NATO or major non-NATO countries. See Section 3.5 of this NPR, *infra*.

1.2.54 "USML" is the United States Munitions List that identifies and enumerates classes of defense articles and defense services subject to the jurisdiction of the ITAR. The USML is found in the ITAR at 22 CFR, Part 121.

1.2.55 "Voluntary Disclosure" is self-disclosure of possible violations of export provisions by persons, firms, or organizations engaged in international transactions. Disclosures of export violations are required to be filed under the ITAR, and are strongly encouraged under the EAR. The HEA will file any such voluntary disclosures concerning possible NASA export control violations with the appropriate agency. All suspected criminal violations in the NASA ECP are to be reported immediately to the HEA, who will consult with the Office of the Inspector General and appropriate regulatory and enforcement agencies. NASA support contractors implementing NASA programs should

report potential voluntary disclosure matters to the HEA in addition to taking other actions required under the EAR or ITAR.

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